

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN**

FREEDOM FROM RELIGION
FOUNDATION, INC., DAN BARKER,
and ANNIE LAURIE GAYLOR, Co-
Presidents of FFRF,

Plaintiffs,

v.

DONALD TRUMP, President of the
United States; and JOHN KOSKINEN,
Commissioner of the Internal Revenue
Service,

Defendants.

Case No. 3:17-CV-00330

DECLARATION OF FATHER PATRICK W. MALONE, OSB

1. My name is Father Patrick W. Malone. I am over the age of 21 and am capable of making this unsworn declaration pursuant to 28 U.S.C. § 1746. I have not been convicted of a felony or crime involving dishonesty, and the facts contained herein are either within my personal knowledge or are based upon teachings of my church with which I am familiar and which I believe to be true and correct.

2. I am the rector of Holy Cross Anglican Church (“Holy Cross Anglican Church” or “Church”) in Waukesha, Wisconsin. The Church is a member of the Anglican Communion, a worldwide fellowship of Anglican churches with over 85 million Christians in 165 countries. The Church is within a province of the Anglican Communion known as the Anglican Church of North America (“ACNA”). ACNA covers the United States, Canada, and Mexico, and it includes about 1,000

congregations with over 100,000 members. The Church is part of the ACNA diocese known as CANA East, a diocese with congregations in the eastern half of the United States. (“CANA” stands for Convocation of Anglicans in North America.)

3. There are about 65 active members of the Church who regularly attend Sunday worship services. As their rector, I am responsible for the preaching and teaching delivered at the Church.

4. In addition to my role as a rector, I am also the Abbot of the Anglican Communion Benedictines, a religious community devoted to prayer. And I serve as an Archdeacon of two dioceses, CANA East and CANA West, where I am responsible for religious orders, societies, and communities in the dioceses. In these and other roles, I have almost 30 years of pastoral and ministry experience.

5. As the rector of Holy Cross Anglican Church, Anglican teaching requires me to preach to the congregation about what it means to be a follower of Jesus Christ and to properly respond to the love that God gave us through Jesus’ sacrifice and resurrection.

6. The 39 Articles of Religion, the defining theological document of the Anglican church, teach that the church must be a place “in which the pure Word of God is preached.” Article XIX, 39 Articles of Religion (September 12, 1801), http://anglicansonline.org/basics/thirty-nine_articles.html. This requires me to preach the full counsel of Holy Scripture on all relevant issues and areas that I believe God leads me to address.

7. This includes teaching the congregation of their responsibility to “uphold and advocate justice in society” and to “seek relief and empowerment of the poor and needy,” in accordance with the Jerusalem Declaration, a defining doctrinal statement signed by Anglican Archbishops in 2008. The Jerusalem Declaration is available here: <http://canaeast.com/#/welcome/we-believe>. I am also guided by my diocese’s priority to “transform injustice” by its efforts to “draw attention to the persecution of Christians around the world, stand up for those who are enslaved or wrongly imprisoned, challenge government infringement of religious freedoms, and insist on protections for the most vulnerable among us including the poor, the elderly, the sick, and the unborn.” CANA East, *Transform Injustice*, <http://canaeast.com/anglicans/transform-injustice/>.

8. According to Scripture, fulfilling these responsibilities to seek justice for the marginalized and weakest among us is a basic Christian duty that, when not followed, renders the performance of other religious actions hollow and meaningless. The book of Isaiah says: “Is this not the kind of fasting that I have chosen: to loose the chains of injustice and untie the cords of the yoke, to set the oppressed free and to break every yoke?” *Isaiah* 1:10-17, 58:1-12. Isaiah is not the only biblical prophet to emphasize justice: “[L]et justice roll on like a river, righteousness like a never-failing stream!” *Amos* 5:10-24; “Woe to him who builds his palace by unrighteousness, his upper rooms by injustice;” *Jeremiah* 22:13-17; “He has shown you, O mortal, what is good. And what does the Lord require of you? To act justly and to love mercy and to walk humbly with your God;” *Micah* 6:8. The book of Proverbs sums it up cleanly:

“Speak up for those who cannot speak for themselves, for the rights of all who are destitute. Speak up and judge fairly; defend the rights of the poor and needy.”

Proverbs 31:8-9.

9. Indeed, Jesus instructs that by seeking and providing for the good of “the least of these” in society, we serve Him personally. *Matthew 25:31-46*. Anglican doctrine interprets this instruction to mean that failing to provide such service is sinful and evidence of a dead faith. “Good Works . . . [are] pleasing and acceptable to God in Christ, and do spring out *necessarily* of a true and lively Faith insomuch that by them a lively Faith may be as evidently known as a tree by the fruit.” Article XII of the 39 Articles.

10. To fulfill my moral duties as rector, and to equip my Church congregation to fulfill theirs as Anglicans, I must preach about current problems in our society that violate God’s moral law and must point my congregation to Christ-centered responses to those injustices.

11. One of the ways that members of my Church congregation can fulfill their religious responsibility to seek justice is by voting for candidates for public office who have promised to advance justice in society and protect the disadvantaged, and to vote against candidates who take positions that harm those goals. *Matthew 25:14-28* (requiring Christians to be good stewards of the resources God gives to them), *Matthew 22:21* (instructing Christians to “render unto to Caesar the things that are Caesar’s; and unto God the things that are God’s.”).

12. Thus, at times and in ways in keeping with my faith, Anglican doctrine requires me to preach to Holy Cross Anglican Church during religious services in a way that makes it clear that there are some specific political candidates that, as a matter of faith, they should not vote for.

13. I have done so in the past and I plan to do so again in the future.

14. Further, Anglican doctrine also requires me to preach about specific moral issues that have direct political implications, and to do so at times—such as near elections—when my congregation can act on that teaching through voting and advocacy. This teaching on moral issues does not always include guidance about particular political candidates.

15. One such issue is the sanctity of life. The Bible teaches that every human being is made in the image of God, *Genesis* 1:26-27, and thus that it is wrong to intentionally take the life of innocent human beings, *Exodus* 20:13, *Deuteronomy* 5:17, *Matthew* 5:21 and 19:18. Further, the Bible treats the unborn as deserving the full respect accorded other human beings. *Psalms* 139:13-15, 22:10-11; *Galatians* 1:15; For example, the gospel of Luke uses the same Greek word, *brephos*, to describe a pre-birth and post-birth human being. *Luke* 1:41, 18:15. And Genesis describes pre-born human beings as “children.” *Genesis* 25:21-22. From the earliest days of the Christian church, church leaders such as St. Augustine, St. Jerome, Tertullian, St. John Chrysostom, and Justinian have recognized elective abortion as a grievous injustice against unborn children, against mothers, and against society. Accordingly, the Anglican Church rejects elective abortion as sin. Indeed, CANA East explicitly

“insists on protections for the most vulnerable among us, including . . . the unborn.”

Available at <http://canaeast.com/anglicans/transform-injustice/>.

16. In the United States, elective abortion is legal, widely practiced, and supported by many elected officials. Thus, it is my responsibility to regularly and appropriately instruct Holy Cross Anglican Church of their Christian duty “to insist on protections” for “the unborn.” As I explain to them, this duty extends to their political choices and their votes.

17. I have in the past, and will in the future, declare to my congregation that elective abortion is a fundamental evil, and that voting for a candidate that supports such laws runs the risk of being a supporter of and accomplice to this grave sin.

18. The history of the church is filled with Christian leaders whose faith in God led them to advocate for change of immoral political policies. This starts in the pages of Scripture, where Moses pushed Pharaoh to end Egypt’s slavery of the Jews; Queen Esther saved her people from legal extermination by appeal to the king; the prophets Daniel, Jeremiah, Ezekiel, Amos, Obadiah, and Nahum instructed their governments to cease political oppression; and John the Baptist publicly denounced a government leader’s incestuous marriage. This practice of the church challenging civil authority is part of our ancient heritage and tradition that has been followed and practiced since the Apostles and Early Church Fathers. Later examples include St. Thomas Becket’s martyrdom for opposing governmental limitations on religious freedom, missionary David Livingstone’s efforts to stop the African slave trade, the 12-year imprisonment of John Bunyan (author of *Pilgrim’s Progress*) for refusing to seek

government licensure to preach, Anthony Ashley Cooper's child labor reform and provision of education for working-class children, William Wilberforce's decades-long battle to end British slavery, and John Wesley's efforts at prison reform. And this tradition continued on through the twentieth century to include Dietrich Bonhoeffer's public opposition to the Third Reich and Rev. Martin Luther King Jr.'s demand for racial equality.

19. Livingstone, Bunyan, Wilberforce, Wesley, Bonhoeffer, and King are all memorialized at Westminster Abbey, a prominent Anglican church. See <http://www.westminster-abbey.org/home>.

20. An essential part of our witness to society at Holy Cross Anglican Church is following this great tradition of challenging the government about ongoing injustice. If we did not follow it, we would not only sin against God, but also our corporate witness to the Gospel of Christ would become inauthentic, irrelevant, and ineffective. As the Reverend Martin Luther King Jr. wrote in his *Letter from Birmingham Jail*, the church must stand against the pervasive, ongoing problem of racial injustice lest it "lose its authenticity" and be "dismissed as an irrelevant social club with no meaning for the twentieth century." See http://mlk-kpp01.stanford.edu/kingweb/popular_requests/frequentdocs/birmingham.pdf.

21. My Anglican faith instructs me to preach about candidates and issues in my capacity as the Church's rector during our normal worship services and religious gatherings. I cannot segregate such Christian guidance into separate times, separate roles, or different places because that would falsely communicate that there is

something different or suspect about such guidance, and inappropriately suggest that Jesus' call to obedience is somehow diminished as it concerns political matters.

22. Further, as a practical matter, I serve no other role to Holy Cross Anglican Church than its rector, and we have no other entity or location at which to hold religious instruction on these matters. The purpose of our gathering together on Sunday mornings is to broadly study all of what God teaches us through sacred Scripture, not just matters that are irrelevant to our personal moral and political choices.

23. Thus, providing such religious guidance in a separate time, location, entity, or role would interrupt and interfere with the Church's internal mission, liturgy, and structure.

24. The Internal Revenue Service has issued a determination letter recognizing Holy Cross Anglican Church's I.R.C. Section 501(c)(3) nonprofit status.

25. To maintain this nonprofit status, it is my understanding that the IRS "absolutely prohibits" me from directly or indirectly making statements to Holy Cross Anglican Church about whether to vote for or against candidates for public office.

26. It is also my understanding that the IRS "absolutely prohibits" me from preaching on issues in a way that does not mention candidates but, in their estimation, has the indirect effect of supporting or opposing candidates for public office.

27. It is further my understanding that the IRS threatens to punish violations of these absolute prohibitions with revocation of Holy Cross Anglican Church's tax

exempt status, which would both subject the Church's income to detailed examination and taxation by the federal government and would prevent the Church's members from obtaining a tax deduction for their tithes to the Church.

28. Further, it is my understanding that the IRS may also elect to punish Holy Cross Anglican Church by imposition of excise taxes against both the Church and against Church leaders such as myself.

29. These sanctions would severely harm the Church, both because of its small size and the modest income of its members and its leadership. The sanctions would substantially burden my and the Church's religious exercise of engaging in certain prohibited religious speech during worship services.

30. These sanctions are disproportionate. Neither I nor the Church spends any appreciable funds on the portion of my sermons which speak on matters prohibited by the IRS. Yet the entirety of the Church's nonprofit status is jeopardized, along with the tax deductibility of tithes from the congregation to the Church, simply for providing this preaching.

31. These sanctions are also inappropriate. The IRS should not control the internal governance of the Church, our internal decisions about our religious mission and instruction, or how we choose to organize our worship services and arrange our weekly Sunday meetings. Yet the IRS uses its direct prohibition and the threat of sanctions to influence and coerce these internal Church decisions.

32. Thus, the threat of these sanctions has chilled and continues to chill my efforts to preach to the Church as I believe God commands. I have not allowed the

threat to entirely prevent me from following my beliefs, but it has consistently created concern both for me and my congregation. This worry has interfered with the Church congregation's ability to receive, understand, and implement the message that I have preached to them.

33. The IRS has not enforced these threats against me or Holy Cross Anglican Church, even though I do not hide and, in fact, have made public that I have preached sermons that directly offered religious guidance to Holy Cross Anglican Church to vote against certain types of candidates for public office and to allow their voting habits to be guided by religious considerations on specific moral issues in specific elections. Indeed, the plaintiff in this case has issued press releases identifying my sermons as illegal electioneering. See <https://ffrf.org/news/news-releases/item/19778-ffrf-opposes-anti-abortion-church%E2%80%99s-intervention>.

34. I am aware that the IRS has discriminatorily targeted religious leaders and nonprofits based on whether they speak in ways that the current administration disfavors. For instance, I am aware that the IRS repeatedly targeted Martin Luther King Jr. and his nonprofit, the Southern Christian Leadership Conference, for discriminatory audits; that All Saints Episcopal Church was investigated and found guilty of illegal campaigning during the Bush Administration for preaching a sermon that was critical of the administration's policies; and that the IRS under the Obama Administration inappropriately targeted certain nonprofit groups because those groups took positions that were politically adverse to the Obama Administration. I

am concerned that my religious teaching will cause the Church and me to be targeted by the IRS.

35. Moreover, I think that it is discriminatory for the government to punish the Church and me because my religious speech to the Church touches on issues of current public importance. The IRS should not favor houses of worship which choose to remain silent.

36. It is my understanding that the Freedom From Religion Foundation (“FFRF”) filed a lawsuit against IRS Commissioner John Koskinen and President Donald J. Trump to compel the IRS to enforce its absolute prohibition on certain religious speech against churches like Holy Cross Anglican Church.

37. FFRF filed a similar lawsuit several years ago. The Church and I intervened in that lawsuit to protect our rights. After we intervened, FFRF voluntarily dismissed its own lawsuit.

38. Just as in its last lawsuit, if FFRF is successful, the IRS will be subject to a legal requirement to enforce its prohibition against churches like Holy Cross Anglican Church, and both the Church and I will face substantial pressure to end our joint religious exercise of, during our normal Sunday worship services, providing and receiving religious instruction on matters that relate to voting choices. That pressure injures our statutory and constitutional rights of religious freedom, freedom of speech, freedom of assembly, and freedom of association, including government interruption and interference with the Church’s internal mission, liturgy, and structure.

39. I first realized this threat in early May 2017, after learning of FFRF's new lawsuit to enforce the IRS's speech restrictions against churches, *FFRF v. Trump*, No. 3:17-CV-00330 (W.D. Wis.).

40. I was particularly concerned because it is my understanding that the IRS already considers my teaching to Holy Cross Anglican Church illegal. Thus, I cannot expect the IRS to assert the Church's and my statutory and constitutional rights against FFRF's requested enforcement in the *Trump* case.

41. I promptly informed the wardens (church leaders) of Holy Cross Anglican Church about the threat.

42. On May 12, 2017, after prayer and consideration, the Church voted to seek to intervene in *FFRF v. Trump* to protect our rights.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 20, 2017.



The Venerable Patrick W. Malone, OSB